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No. 00-1826

In The

Supreme Court of the United States

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA,

Petitioner,

v.

BELINDA A. ALEXANDER, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Mississippi

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF NATIONAL ASSOCIATION OF INDEPENDENT INSURERS IN SUPPORT OF PETITION FOR CERTIORARI FILED BY PETITIONER AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA

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MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to Supreme Court Rule 37, the National Association of Independent Insurers ("NAII") hereby moves for leave to file its *amicus curiae* brief, submitted with this motion, in support of the Petition for Writ of Certiorari filed by American Bankers Insurance Company of Florida. The consent of the attorneys for the petitioner and for Fidelity Financial Services of Mississippi has been obtained. The consent of the attorneys for the respondents was requested, but all respondents refused to consent.

The interest of NAII in this case involving collateral protection insurance arises from the fact that NAII is a national trade association of over 690 member insurance companies dedicated to expanding the choices available to the insurance-buying public, reducing the costs of insurance, and promoting competition. While on its face the Mississippi Supreme Court's split (5-4) decision concerns one company and one type of insurance, the decision's ramifications extend far beyond the facts of this particular case to all insurance companies and their customers in all states. NAII is uniquely suited to assist the Court in this case because NAII is able to offer the Court the collective knowledge and experience of a membership that has a thorough understanding of the industry-wide implications of the Mississippi Supreme Court's decision. The Mississippi Supreme Court's decision affects not only the parties to this case, but also the public interest, in that it affects most (if not all) other insurers who issue any type of insurance policy to a resident of Mississippi. In fact, the decision at issue here is not confined to the

insurance industry, but rather affects all industries which transact business both with Mississippi residents and with residents in other states, since the mass joinder approach approved by the Mississippi Supreme Court is not confined to cases involving insurance companies.

For over 50 years, NAII has represented the interests of property and casualty insurance companies and their customers throughout the United States.[1] NAII has members in 49 states, more than any other insurance trade group. Its membership includes companies of every size and type, from national multi-line insurance groups to one-state niche writers of insurance. NAII's members represent a comprehensive cross-section of the industry and write all lines of property and casualty insurance, using every distribution system. NAII's members are also active in Mississippi – five of its member companies are domiciled in Mississippi, while 213 of its members write $910 million in premiums there, representing about 37% of the market.

NAII's *amicus curiae* brief addresses only relevant matter not already discussed in the brief of Petitioner and

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[1] Cases before this Court in which NAII has participated as *amicus curiae* include: *John Deere Ins. Co. v. Nueva*, ___ U.S. ___, 121 S. Ct. 2190 (2001); *Nationwide Mut. Ins. Co. v. Cisneros*, 516 U.S. 1140 (1996); *Allstate Ins. Co. v. Fortunato*, 502 U.S. 1121 (1992); *Nationwide Mut. Ins. Co. v. Darden*, 502 U.S. 1011 (1991); *Phillips Petroleum Co. v. Shutts*, 469 U.S. 879 (1984); *Motor Vehicle Manufacturers Ass'n of the United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29 (1983); *Gillette Co. v. Miner*, 457 U.S. 1116 (1982); *Gillette Co. v. Miner*, 456 U.S. 914 (1982); and *Allstate Ins. Co. v. Kelley*, 442 U.S. 934 (1979).

will more fully discuss the implications of this case beyond the implications to the litigants themselves.

Respectfully submitted,

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INTEREST OF *AMICUS CURIAE*[1]

The National Association of Independent Insurers ("NAII") is an association of insurance companies dedicated to expanding the choices available to the insurance-buying public, reducing the costs of insurance, and promoting competition. For over 50 years, NAII has represented the interests of property and casualty insurance companies and their customers throughout the United States. NAII has members in 49 states, more than any other insurance trade group. Its membership includes companies of every size and type, from national multi-line insurance groups to one-state niche writers of insurance. NAII's members represent a comprehensive cross-section of the industry and write all lines of property and casualty insurance, using every distribution system. NAII's members are also active in Mississippi – five of its member companies are domiciled in Mississippi, while 213 of its members write $910 million in premiums there, representing about 37% of the market.

NAII becomes actively involved in cases to see that the law develops in a way that protects both the insurer and the insured. NAII is concerned about this case because Mississippi's mass joinder procedure, which abandons traditional common law requirements that comport with due process, protects neither the insurer nor the insured and dramatically reworks the current

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[1] Counsel for a party has not authored this brief in whole or in part, and no person or entity, other than *amicus curiae* or its counsel, has made a monetary contribution to the preparation or submission of the brief.

regime of insurance regulation. The mass joinder procedure results in Mississippi regulating activities of insurance companies outside Mississippi, contrary to the fundamental principle that each state is entitled to regulate the insurance industry within its borders. Mississippi's mass joinder procedure has a more direct impact on NAII's members and customers because it will result in increased insurance costs and rates. Furthermore, even when insurance companies are not parties to one of these mass joinder cases, they are affected because they may insure the interests involved. As a result, they will book reserves for the claims, tying up capital and restricting its flow into the economy. Thus, while NAII is directly concerned with how insurance companies and their customers are affected by Mississippi's decision, that decision also implicates concerns beyond those of the insurance industry.

The interests of NAII's members are directly affected because the decision of the Mississippi Supreme Court interpreted Mississippi's rules regarding joinder and venue in a manner that, NAII believes, is contrary to the minimum standards of fairness required by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, U.S. Const. amend. XIV, § 1. The Mississippi Supreme Court's decision has serious implications not only for petitioner American Bankers Insurance Company of Florida, but also for many other members of NAII who do business in Mississippi and for the millions of individuals, corporations, and others protected by insurance in Mississippi. The Mississippi Supreme Court's decision (1) creates a mass joinder device akin to a class action with none of the safeguards

required in the case of class actions, and (2) permits hundreds or even thousands of plaintiffs from anywhere in the United States to file a mass lawsuit in Jefferson County, Mississippi, even though they and their transactions have nothing to do with Jefferson County, as long as they can find one Jefferson County plaintiff. NAII believes that the Mississippi Supreme Court's decision is likely to (1) lead to higher premiums for consumers in Mississippi and nationwide, and (2) reduce consumer options in insurance by driving some insurers out of Mississippi.

ARGUMENT

This case presents an important question of federal law that has not been, but should be, settled by this Court. The Mississippi Supreme Court, in a split decision (5-4), answered that question incorrectly when it held that due process permits the joinder in a Mississippi state court action of an unlimited number of plaintiffs from anywhere in the United States – even as far away as Hawaii or Alaska, or, as in this case, the state of Washington – even though the vast majority of plaintiffs have no connection with the forum. The Mississippi court reached this conclusion despite the fact that Rule 20 of the Mississippi Rules of Civil Procedure, Miss. R. Civ. P. 20, expressly requires that the rights asserted by the plaintiffs must arise from the "same transaction, occurrence, or series of transactions or occurrences," despite years of contrary precedent in other jurisdictions, and despite the

enforcement of a joinder requirement in every other jurisdiction which guards against the abuse now possible in Mississippi.

This issue should be addressed now because of the enormous pressure to settle a case required to proceed under these conditions without regard to the merits. *See Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 740 (1975) (discussing effects of improper class certification); *Waste Management Holdings, Inc. v. Mowbray*, 208 F.3d 288, 293 (1st Cir. 2000) (same). In addition, if the Court decides not to review this case now, an endless stream of such cases may be filed and settled before any review of the issue occurs. In light of the harm that will almost certainly result if the Mississippi Supreme Court's decision is allowed to stand, this important constitutional question should not remain unanswered.

A. Mississippi's Mass Joinder Procedure Will Have Adverse Effects on the Insurance Industry Nationally, and in the Market for All Types of Insurance, As Well As on Other Industries.

Mississippi Rule 82(c) provides that venue is proper as to all plaintiffs as long as it is proper as to only one plaintiff.[2] Based on this rule, Mississippi has adopted a

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[2] Rule 82(c) of the Mississippi Rules of Civil Procedure provides:

> Where several claims or parties have been joined, the suit may be brought in any county in which any one of the claims could properly have been brought. Whenever an action has been commenced in a proper county, additional claims and parties may be joined,

mass joinder procedure which allows joinder of plaintiffs even though they and their transactions have no connection to Mississippi. This will likely have adverse effects on the insurance industry nationally, not just in the market for the collateral protection insurance that is the subject of this case. The purpose of joinder is to promote judicial economy and trial convenience. *See League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency*, 558 F.2d 914, 917 (9th Cir. 1977). However, these goals are subordinate to the concern for fairness which guides the interpretation of all procedural rules. *United Mine Workers v. Gibbs*, 383 U.S. 715, 724 (1966). Joinder is not meant to permit plaintiffs to shop for a favorable forum when that forum has no connection to them or to their claims. *Burka v. Aetna Life Ins. Co.*, 87 F.3d 478, 481 (D.C. Cir. 1996) (discussing forum-shopping concerns in joinder context).

In theory, joinder reduces litigation costs for all the parties and the courts and reduces the chances of inconsistent results. *Mosley v. General Motors Corp.*, 497 F.2d 1330, 1332 (8th Cir. 1974). In Mississippi, joinder does the opposite. Mississippi's mass joinder procedure as applied here provides that hundreds of claims will proceed six plaintiffs at a time in one court.[3] Thus, to the extent there are common issues, those issues will be litigated over and

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> pursuant to Rules 13, 14, 22 and 24, as ancillary thereto, without regard to whether that county would be a proper venue for an independent action on such claims or against such parties.

Miss. R. Civ. P. 82(c).

[3] The trial court ordered that the case would be tried in groups of six plaintiffs. *See* Petition for a Writ of Certiorari, at 8 (discussing trial court orders).

over again. To the extent that there are different issues, and clearly there are in these cases, those too will have to be litigated six at a time. In addition, this mass joinder procedure will invite additional claims seeking excessive damages as a result of the coercive pressure to settle these claims regardless of the merits of the case. *See Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 740 (1975) (discussing effects of improper class certification); *Waste Management Holdings, Inc. v. Mowbray*, 208 F.3d 288, 293 (1st Cir. 2000) (same). The further result would be that meritless claims will slip through the cracks because of the overwhelming burden of closely scrutinizing all claims. In short, Mississippi's procedure does not accomplish the goals of efficiency and fairness, but instead results in duplicative procedures and confusing evidentiary presentations. The mass joinder procedure will only raise the costs of the parties and the expenses of the courts, and creates serious risks of unfair results.

The higher costs caused by Mississippi's mass joinder procedure will harm consumers who must ultimately absorb these costs in the form of higher insurance premiums. These premiums may be higher for just Mississippi customers, or, if costs cannot be absorbed by Mississippi customers alone, then those costs will have to be distributed throughout the entire insurance market, resulting in increased costs for all customers. Faced with higher premiums, some may go without insurance, thereby exposing themselves to greater risks of loss. Finally, insurance companies may leave Mississippi as a result of the higher costs of doing business there, which would reduce consumer choices and competition, further driving up premiums.

Another detrimental result of the mass joinder procedure is that it makes business planning extremely difficult. Insurance statutes and regulations vary from state to state as the result of the important interests of states in regulating the conduct of insurance companies within their borders. However, NAII members can and do rely on certain fundamental principles in operating and planning their businesses, the most basic of which is due process. The Mississippi procedure is a drastic deviation from how things work in every other state. This Court has "relied on history and 'widely shared practice' as a guide to determining whether a particular state practice so departs from an accepted norm as to be presumptively violative of due process. . . . " *TXO Prod. Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 457 (1993) (plurality opinion). Mississippi's joinder procedure does not comport with fundamental fairness because it is a dramatic departure from traditional joinder practice and is contrary to joinder procedure in every other jurisdiction.

Under Mississippi's approach, businesses cannot predict where and how disputes will be resolved and have no assurance that those disputes will be resolved using a fair process. Every company doing business in Mississippi will have to respond to these new joinder rules in some way, and that response necessarily implicates the conduct of business outside Mississippi. The options available to business are to restructure their contracts, stop offering certain types of insurance in Mississippi, or stop doing business in Mississippi entirely. Costs of litigation alone should not cause these results.

Another basic principle which Mississippi's approach violates is that each state is entitled to regulate the business of insurance within its borders without interference by any other state. State autonomy in insurance regulation is recognized in section 2 of the McCarran-Ferguson Act, 15 U.S.C. § 1012. Insurance companies conduct their business on the basis that a contract governed by Oklahoma law, for example, will be interpreted by the insurance department and courts in Oklahoma who are experts in Oklahoma insurance law. Under Mississippi's approach, a Mississippi court will have to serve as an expert not only on Mississippi insurance law, but also on the laws of every other jurisdiction whose law applies to any of the contracts at issue in this case. Although all courts are on occasion called on to interpret and apply the law of other jurisdictions, normal joinder principles guarantee that only plaintiffs with sufficient interest to advance their interpretation of other states' laws are in the case. This reduces the frequency of a court construing – or misconstruing – another state's law and the important state policies behind it. Those limitations were effectively removed by the Mississippi court. By permitting plaintiffs whose insurance transactions have nothing to do with Mississippi to join a Mississippi lawsuit, Mississippi is undermining the authority of the different states to regulate as they see fit insurance transactions affecting their residents. Now, suddenly, a court and jury in Mississippi will regulate the insurance industry everywhere, even though Mississippi has no legitimate interest in these transactions. This extra-territorial regulation of the insurance industry by Mississippi is in direct conflict with the traditional principles of insurance regulation

and with our federal system. *See* 15 U.S.C. § 1012 (describing limits on regulation of insurance by federal government and the states); *Wolfson v. Mutual Ben. Life Ins. Co.*, 51 F.3d 141 (8th Cir. 1995) (describing policy of deferring to state regulation of insurance industry).

B. Mississippi's Mass Joinder Procedure Does Not Balance the Interests of Plaintiffs and Defendants Sufficiently As Required by Due Process.

This Court should also review the Mississippi Supreme Court's decision interpreting the Due Process Clause because that interpretation dilutes the protection the Constitution affords in suits involving multiple plaintiffs. Joinder is limited by the principles of fairness embodied in the Due Process Clause. *United Mine Workers v. Gibbs*, 383 U.S. 715, 724 (1966). The mass joinder procedure approved by the Mississippi Supreme Court, which promotes forum shopping and subjects defendants to undue settlement pressure, violates these principles.

1. Mississippi's mass joinder device promotes forum shopping.

Mississippi's joinder procedure promotes forum shopping in violation of the Due Process Clause. Joinder cannot be motivated primarily by considerations of the best forum for the plaintiff. *Rodriguez v. Abbott Laboratories*, 151 F.R.D. 529, 532 (S.D.N.Y. 1993). A court should look with "particular care" at joinder devices that permit a plaintiff to defeat the diversity jurisdiction of the federal courts, thereby requiring a case to proceed in state

court because an out-of-state plaintiff with the same citizenship as the out-of-state defendant has joined in the suit. *Desert Empire Bank v. Insurance Co. of North America*, 623 F.2d 1371, 1376 (9th Cir. 1980). Actions instituted in state courts to circumvent federal class action requirements are disfavored. *Lander v. Hartford Life & Annuity Insurance Co.*, 251 F.3d 101, 107-08 (2d Cir. 2001) (stating that the purpose of the Securities Litigation Uniform Standards Act of 1998, Pub. L. No. 105-353, 112 Stat. 3227, codified as amended in part at 15 U.S.C. §§ 77p & 78bb(f), was to curb class action litigation instituted in state courts in order to avoid more stringent requirements in federal courts).

Mississippi's procedure allows plaintiffs to achieve in state court what they could not achieve in federal court and to unfairly exploit state court proceedings to their benefit. The court in *Lander* noted that congressional action was prompted by an increasing number of class actions being instituted in state courts so that plaintiffs could avoid the heightened requirements for securities class actions in federal courts designed to curb abusive "strike suits" by shareholders. *Lander*, 251 F.3d at 107-08. In this case, plaintiffs are not attempting to sidestep a particular federal rule by doing in state court what they could not do in federal court. However, with the Mississippi Supreme Court's acquiescence, plaintiffs can now avoid the long-established common law principles of fairness that are the basis for the limitations on joinder. *United Mine Workers v. Gibbs*, 383 U.S. 715, 724 (1966).

Another concern with unrestrained joinder in combination with over-inclusive venue rules is that foreign companies may be subject to discrimination. *League of*

United Latin Am. Citizens, Council No. 4434 v. Clements, 999 F.2d 831, 874 (5th Cir. 1993). Often an insurance company is an out-of-state "deep pocket" vulnerable to the bias and prejudice of local juries. Insurance companies, like other foreign companies, need protection from state procedures like Mississippi's that create opportunities for bias and prejudice to influence the judicial process.

2. Mississippi's de facto class action mechanism does not provide the requisite protection for defendants.

The established class action mechanism provides an appropriate procedure for dealing with claims involving large numbers of plaintiffs because it has the requisite constitutional safeguards. Significantly, the federal courts in Mississippi have found that these cases should not proceed as class actions.[4] Mississippi's mass joinder approach circumvents those findings. Mississippi could adopt rules providing for class actions should it choose to do so. Its alternative mass joinder procedure is constitutionally deficient because it brings all plaintiffs together in one suit without the requirement that the plaintiffs' claims have any connection to Mississippi, or be based on

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[4] *Thomas v. Fidelity Fin. Servs., Inc.*, No. 3:96-CV-00035 (S.D. Miss. Mar. 31, 1997) (voluntarily dismissing class complaint following denial of class certification); *Wilks v. Sunstar Acceptance Corp.*, No. 1:96:CV-220GR (S.D. Miss. July 22, 1996) (same); *Sims v. Fidelity Acceptance Corp.*, 2:96:CV-160 P.A. (S.D. Miss. July 16, 1996) (same).

requirements that ensure the efficiency and fairness of the proceeding.

Class actions have evolved to allow plaintiffs with claims involving common issues of law or fact to proceed through a class representative when joinder is impracticable and the economics of the individual suits make it unlikely that individual claims can be economically pursued. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985). After determining that the class representative's claims are typical and that the class representative can adequately represent the interests of the class, class actions entrust the interests of the entire class of plaintiffs to that class representative. That avoids the need for duplicative lawsuits, or for lawsuits with unduly large numbers of plaintiffs. This approach is consistent with the considerations of fundamental fairness to plaintiffs and to defendants that underlie due process.

Class action procedures are specifically designed for cases where joinder is impracticable – in fact, impracticability of joinder is a prerequisite to class certification. *See, e.g.*, Fed. R. Civ. P. 23(a)(1). These procedures include that a class action is a representative suit, with one or more plaintiffs or one or more defendants (depending on the type of suit) representing the interests of the class. Fed. R. Civ. P. 23(a). This protects defendants as well as plaintiffs because it focuses into one proceeding the issues applicable to all plaintiffs. Most class actions are also characterized by predominance of common questions, Fed. R. Civ. P. 23(b), which serves efficiency by avoiding numerous mini-trials. There is also, in most cases, a requirement that notice be given to members of the class,

with an opt-out provision for members of the class who choose not to participate. *See, e.g.*, Fed. R. Civ. P. 23(c). This accommodates concerns over collateral estoppel and claim preclusion by binding all members of the class who do not opt out, thereby providing important protection both for plaintiffs, and for defendants who otherwise would be faced with numerous duplicative lawsuits. *American Pipe and Construction Co. v. Utah*, 414 U.S. 538, 550 (1974).

Mass joinder in Mississippi does not have these features and has no adequate substitutes for them. Specifically, Mississippi's mass joinder procedure does not provide for a representative plaintiff, does not require predominance of common issues, does not require notice to other potential plaintiffs, and does not result in claim preclusion for would-be plaintiffs who can obtain the benefits but avoid the risks of the mass joinder action.

The Mississippi Supreme Court has previously justified its rejection of class actions by identifying what it perceived as shortcomings in class actions. These shortcomings include the fact that the plaintiffs do not get their own day in court, *Barrett v. Coulett*, 263 So.2d 764, 766 (Miss. 1972), and that defendants are under an extraordinary amount of pressure to settle cases on terms shaped primarily by the costs of litigation, not an assessment of the merits of the claims, *Evans v. Progressive Cas. Ins. Co.*, 300 So.2d 149, 151 (Miss. 1974). The court, citing these defects, refused to adopt a class action rule, but has not remedied them in this mass joinder procedure. The Mississippi Supreme Court has given all plaintiffs their day in court, but defendants are still subject to enormous pressures to settle to avoid the onerous task of litigating

cases in the unfair manner required by that court. Instead of improving on what it sees as a deficient class action procedure, Mississippi has simply taken the pro-plaintiff elements of the class action while omitting elements designed to protect defendants, such as the provision that plaintiffs be representative of all class members or that common issues predominate, thereby leaving defendants extremely vulnerable to undue pressure to settle without regard to the merits.

Of the three most commonly-used aggregation devices (permissive joinder, class action, and consolidation), the requirements for proper joinder (as interpreted everywhere but Mississippi) have traditionally been the most stringent because joinder requires that the plaintiffs' claims arise from the "same transaction or occurrence" in addition to the requirement that there be a "common question of law or fact," a requirement which it shares with both consolidation and class actions.[5]

In Mississippi the requirements for joinder are now the same as those for consolidation because, for all practical purposes, both now require only a common issue of law or fact. *See* Miss. R. Civ. P. 42 (describing consolidation). However, consolidation traditionally provides much greater protection to defendants than joinder. For example, in Mississippi's mass joinder approach, the separate proceedings become one as all distinctions as to

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[5] The additional requirements for a class action identified in federal Rule 23(a) primarily concern the adequacy of representation by the class plaintiffs and not the commonality of issues involved in the case. Fed. R. Civ. P. 23(a).

individual claims and defenses between the parties are blurred, versus consolidation, in which the individual claims and defenses are maintained and are subject to venue rules requiring proper venue for each case. *See* Miss. R. Civ. P. 82 (describing venue requirements).[6] These protections offset the risks and limitations of consolidating claims, including juror confusion, disclosure of prejudicial information to jurors, delay, administrative difficulties, and inconsistent results. 8 JAMES W. MOORE, MOORE'S FEDERAL PRACTICE §§ 42.10[4], 42.10[5] (3d ed. 1997).[7] These risks are greatly lessened in joinder when the "same transaction or occurrence" requirement of the joinder rules is properly enforced. Once this requirement is effectively removed, as it was by the Mississippi Supreme Court, those risks emerge in joinder as well.

The problem here, of course, was that consolidation would not have produced the mass litigation plaintiffs wanted because, in the case of consolidation, venue must be proper for each case so that only properly venued cases would be consolidated. On the other hand, Mississippi Rule 82(c) at issue here requires only that venue be proper as to one of the plaintiffs.

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[6] The Court has recognized the risks inherent in consolidation in its holdings that consolidation does not merge cases. *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479 (1933).

[7] Even when common questions of fact exist, consolidation can be prejudicial. *Seguro de Servicio de Salud v. McAuto Sys. Group, Inc.*, 878 F.2d 5, 9 (1st Cir. 1989).

Unlike the Mississippi joinder procedure, the procedures used in every other state and the federal courts provide adequate safeguards of due process rights.[8] The class action mechanism is an adequate, if not perfect, means for resolving very similar disputes between large numbers of people that reflects the proper evolution of the joinder device available at common law. Mississippi's procedure does not.

3. NAII supports the arguments advanced by American Bankers Insurance Company of Florida.

NAII supports the arguments advanced by Petitioner in seeking review of the Mississippi Supreme Court's decision. As Petitioner indicates, joinder provisions must comport with fundamental fairness. Petition for a Writ of Certiorari, at 17-21, citing cases. Among the factors to

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[8] Like Mississippi, Virginia does not have a class action rule. However, Virginia's joinder rules contain very specific prerequisites designed to avoid the unfairness of unrestricted joinder when six or more plaintiffs are joined in one action. Virginia's "Multiple Claimant Litigation Act," codified at Va. Code Ann. §§ 8.01-267.1, *et seq.*, provides that joinder of six or more plaintiffs is proper only if the "common issues predominate and are significant to the actions," Va. Code Ann. § 8.01-267.1(2), and if joinder will "promote the ends of justice and the just and efficient conduct and disposition of the actions," "is consistent with each party's right to due process of law," and "does not prejudice each individual party's right to a fair and impartial resolution of each action." Va. Code Ann. § 8.01-267.1(3). These rules provide the protection for the due process rights of defendants that is lacking in Mississippi's mass joinder procedure.

consider when evaluating joinder are "the possible prejudice that may result to any of the parties in the litigation." *Desert Empire Bank v. Insurance Co. of North America*, 623 F.2d 1371, 1375 (9th Cir. 1980). Petitioner's thorough discussion of the prejudice resulting from Mississippi's procedure is equally applicable to any insurance company subjected to that procedure.

CONCLUSION

Prompt and proper resolution of this case is central to the ability of insurance companies to continue to conduct business in a predictable and reasonable manner, and for customers of those insurance companies to have access to affordable insurance from a variety of sources. The standard for joinder that has evolved from the British common law to its present state serves the important purposes of due process by ensuring that defendants will not be subject to unduly burdensome litigation. Mississippi's rejection of the traditional universal requirements for joinder serves none of the purposes of joinder. Therefore, *amicus curiae* NAII urges that the petition for certiorari be granted.

Respectfully submitted,

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